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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 151023986-6557-01]

RIN 0648-XE284

**Pacific Island Pelagic Fisheries; 2016 U.S. Territorial
Longline Bigeye Tuna Catch Limits**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes a 2016 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Northern Mariana Islands). NMFS would allow each territory to allocate up to 1,000 mt each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. The proposed catch limits and accountability measures would support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: NMFS must receive comments by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0140, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0140>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments

(enter "N/A" in the required fields if you wish to remain anonymous) .

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the proposed catch limits and accountability measures. The environmental analyses are available at www.regulations.gov. The information contained in the environmental analyses is not repeated here.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808-725-5176.

SUPPLEMENTARY INFORMATION: NMFS proposes to specify a catch limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating territory in 2016. NMFS would also authorize each U.S. Pacific territory to allocate up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Those vessels must be identified in a specified fishing agreement with the applicable territory. The Western Pacific Fishery Management Council recommended these specifications.

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S. Pacific territory, including catches made by U.S. longline vessels

operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819 (Territorial catch and fishing effort limits). When NMFS projects that a territorial catch or allocation limit will be reached, NMFS would, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

NMFS will consider public comments on the proposed action and will announce the final specifications in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. Regardless of the final specifications, all other management measures will continue to apply in the longline fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is

consistent with the applicable FEPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

The proposed action would specify a 2016 limit of 2,000 metric tons (mt) (4,409,240 lb) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). Without this catch limit, these U.S territories would not be subject to a limit because they, as Participating Territories to the Western and Central Pacific Fisheries Commission (WCPFC), do not have a bigeye tuna limit under international measures adopted by the WCPFC. NMFS would also allow each territory to allocate up to 1,000 mt (2,204,620 lb) of its 2,000 mt bigeye tuna

limit each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria set forth in 50 CFR 665.819. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna by vessels in the applicable U.S. territory (if the territorial catch limit is projected to be reached), or by vessels operating under the applicable specified fishing agreement (if the allocation limit is projected to be reached). Payments under the specified fishing agreements support fisheries development in the U.S. Pacific territories and the long-term sustainability of fishery resources of the U.S. Pacific Islands.

This proposed action would directly apply to longline vessels federally permitted under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP), specifically Hawaii longline limited entry, American Samoa longline limited entry, and Western Pacific general longline permit holders. As of June 2016, 139 vessels possessed Hawaii longline limited entry permits (out of 164 total permits), 40 possessed American Samoa longline limited entry permits (out of 60 total permits), and one vessel held a Western Pacific general longline permit.

According to landings information provided in the environmental assessment prepared in support of this action and logbook information, Hawaii-based longline vessels landed approximately 25,791,000 lb of pelagic fish valued at \$93,963,000 in 2012 and 27,053,000 lb of pelagic fish valued at \$88,552,000 in 2013. With 129 vessels making either a deep- or shallow-set trip in 2012, and 135 vessels in 2013, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged about \$728,000 and \$656,000 per vessel in 2012 and 2013 respectively. In 2014, 140 vessels made approximately 1,431 trips, with 19,115 sets, and 47,130,556 hooks. In 2015, 142 vessels made approximately 1,448 trips, with 18,469 sets, and 47,489,544 hooks. Final catch, landings, and revenue information for the Hawaii-based longline fleet in 2014 and 2015 are not yet available.

In 2013, 22 American Samoa longline vessels turned in logbooks reporting the landing of 162,444 pelagic fish (approximately 6 million lb) valued at \$6,772,386. Albacore made up the largest proportion of pelagic landings in American Samoa at 4,525,453 lb and bigeye tuna comprised of 187,954 lb. With 22 active longline vessels, the ex-vessel value of pelagic fish caught by the American Samoa longline fishery averaged about \$307,836 per vessel in 2013. With

regard to Guam and CNMI, no longline fishing has occurred since 2011.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Based on this information, NMFS has determined that all vessels permitted federally under the Pelagic FEP are small entities, i.e., they are engaged in the business of fish harvesting (NAICS 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic

impact to individual vessels. The proposed action would potentially benefit Hawaii-based longline fishery participants by allowing them to fish under specified fishing agreements with a territory, which could extend fishing effort for bigeye tuna in the Western Pacific Ocean and provide more bigeye tuna for markets in Hawaii.

Amendment 7 to the Pelagic FEP established a process by which NMFS could specify catch and/or effort limits for pelagic fisheries in American Samoa, Guam and CNMI, regardless of whether the WCPFC adopts a limit for those entities or not. Amendment 7 also allows NMFS to authorize the government of each territory to allocate a portion of their catch and/or effort limits through territorial fishing agreements. Specifically, bigeye tuna landed by vessels included in a fishing agreement are attributed to the U.S territory to which the agreement applies, and not counted towards the U.S. bigeye tuna limit established by NMFS under a separate authority in 50 CFR Part 300, Subpart O.

In accordance with Federal regulations at 50 CFR Part 300, Subpart O, vessels that possess both an American Samoa and Hawaii longline permit are not subject to the U.S bigeye tuna limit. Therefore, these vessels may retain bigeye tuna and land fish in Hawaii after the date that

NMFS projects the fishery would reach that limit. Further, catches of bigeye tuna made by such vessels are attributed to American Samoa, provided the fish was not caught in the U.S. EEZ around Hawaii. In 2015, all dual American Samoa/Hawaii longline permitted vessels were included in the fishing agreement with CNMI. Therefore, NMFS attributed bigeye catches by those vessels to the CNMI.

The 2016 U.S. bigeye tuna catch limit established in 50 CFR 300, Subpart O is 3,554 mt, which is about 1.5% higher than the 2015 limit. In 2015, the U.S. longline fishery was subject to a catch limit of 3,502 mt (WCPFC limit of 3,554 mt less the 2014 catch overage of 52 mt). NMFS closed the fishery on August 5, 2015, because the fishery reached the limit (80 FR 46515, July 28, 2015). However, effective October 9, 2015, NMFS specified the 2015 catch and allocation limits for the CNMI and all vessels in the Hawaii longline fleet immediately entered into a specified fishing agreement with the CNMI. NMFS forecasted vessels listed in the CNMI specified fishing agreement would reach the 1,000-mt allocation limit on November 30, 2015 and issued a notice that it would restrict retention of bigeye tuna by vessels identified in that agreement on that date (80 FR 74002, November 27, 2015). Effective November 25, 2015, NMFS specified the 2015 catch and

allocation limit for Guam and all Hawaii longline vessels immediately entered into a second specified fishing agreement with Guam on that date. Preliminary data from PIFSC indicate that Hawaii longline vessels caught the entire 1,000-mt bigeye tuna allocation provided by the CNMI specified fishing agreement, but did not reach the 1,000 mt allocation limit provided by the Guam specified fishing agreement before the 2015 fishing year ended on December 31, 2015 (NMFS PIFSC unpublished data; Preliminary 2015 U.S. Part 1 annual report to the WCPFC).

Through this action, Hawaii-based longline vessels could again potentially enter into one or more fishing agreements with participating territories. This would enhance the ability of these vessels to extend fishing effort in the Western and Central Pacific Ocean and provide more bigeye tuna for markets in Hawaii. Providing opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is high will result in positive economic benefits for fishery participants and net benefits to the nation. Allowing participating territories to enter into specified fishing agreements under this action, provides benefits to the territories by providing funds for territorial fisheries development projects. In terms of the impacts of reducing the limits of

bigeye tuna catch by longline vessels based in the territories from an unlimited amount to 2,000 mt, this is not likely to adversely affect vessels based in the territories.

Historical catch of bigeye tuna by the American Samoa longline fleet has been less than 2,000 mt, even including the catch of vessels based in American Samoa, catch by dual permitted vessels that land their catch in Hawaii, and catch attributed to American Samoa from U.S. vessels under specified fishing agreements (which occurred in 2011 and 2012). With regard to Guam and CNMI, no longline fishing has occurred since 2011.

Under the proposed action, longline fisheries managed under the Pelagic FEP are not expected to expand substantially nor change the manner in which they are currently conducted, (i.e., area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear), due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations

or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed rule based on gear type, or relative vessel size. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866 because this action contains no implementing regulations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 30, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

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